

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

JAYSON HUTCHINSON,

Plaintiff,

v.

Civil Action No. 2:19-cv-00060

UNITED DAIRY, INC.,

Defendant.

NOTICE OF REMOVAL

TO: Cathy S. Gatson, Clerk
Circuit Court of Kanawha County
Kanawha County Courthouse
111 Court Street
Charleston, WV 25301

Robert D. Cline, Jr., Esq.
Robert A. Campbell, Esq.
R. Chad Duffield, Esq.
Farmer, Cline & Campbell, PLLC
746 Myrtle Road
Post Office Box 3842
Charleston, WV 25314

In accordance with 28 U.S.C. §§ 1332, 1441, and 1446, you are hereby notified that the Defendant, United Dairy, Inc., a corporation, has removed the above-captioned case from the Circuit Court of Kanawha County, West Virginia, to the United States District Court for the Southern District of West Virginia, Charleston Division. In support of its Notice of Removal, the Defendant states as follows:

BACKGROUND

1. On or about December 21, 2018, the Plaintiff Jayson Hutchinson filed a Complaint in the Circuit Court of Kanawha County, West Virginia, Civil Action No. 18-C-1553.

2. The Defendant, United Dairy, Inc., a corporation, was served with the Complaint via the Secretary of State on or about December 28, 2018.

3. The Complaint alleges that on January 26, 2017, Plaintiff Jayson Hutchinson was injured when working for United Dairy, Inc. at its facility located in Charleston, Kanawha County, West Virginia (Compl. at ¶6). According to the Complaint, Mr. Hutchinson was injured when he tried to remove a jam of milk cartons, and a chain from the floor conveyor pinned his leg against a metal plate (Compl. at ¶11). Plaintiff alleges that he suffered severe injuries such that the lower part of his left leg had to be amputated (Compl. at ¶15). Plaintiff seeks damages for medical expenses, lost wages, pain and suffering, disfigurement, diminished capacity to enjoy life, annoyance and inconvenience, and other consequential damages. (Compl. at ¶27).

THE PARTIES

4. Plaintiff Jayson Hutchinson is a resident and citizen of Kanawha County, West Virginia. (Compl. at ¶1).

5. Defendant United Dairy, Inc. is a corporation registered in the State of Ohio with its principal place of business in Martins Ferry, Ohio. The Defendant is not a citizen of the State of West Virginia.

BASIS OF REMOVAL

6. This civil action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and which may be removed to this Court by the Defendant pursuant to the provisions of U.S.C. § 1441, because it is a civil action between citizens of different states wherein the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

7. Both the Plaintiff and the Defendant are citizens of different states. Further, the Defendant's principal place of business is located in a different state.

8. Although Plaintiff did not specifically plead an amount of damages in the Complaint, this case may be removed because it is facially apparent from the Complaint that Plaintiff seeks damages in excess of \$75,000.

9. "A defendant who removes a case from state court in which the damages sought are unspecified, asserting the existence of federal diversity jurisdiction, must prove by the preponderance of the evidence that the value of the matter in controversy exceeds the jurisdictional amount." *Ashworth v. Albers Medical, Inc., et al.*, 395 F. Supp 2d, 395, 413 (S.D. W. Va. 2005). The jurisdictional minimum may be satisfied by claims of compensatory damages, attorney's fees and punitive damages. *Id.* at 413-4.

10. In the present case, Plaintiff seeks damages arising out of an incident wherein he alleges that he suffered severe and permanent injuries as a result of his leg being pinned against a metal place. Specifically, Plaintiff seeks damages because he suffered "severe injuries such that the lower part of his left leg had to be amputated." (Compl. at ¶15). Plaintiff seeks damages for medical expenses, lost wages, pain and suffering, disfigurement, diminished capacity to enjoy life, annoyance and inconvenience, and other consequential damages.

11. Under West Virginia law, Plaintiff's recovery is theoretically unlimited and only a binding stipulation that he would not seek nor accept more than \$75,000.00 could limit recovery. See *Hicks v. Herbert*, 122 F.Supp2d 699 (S.D.W.Va. 2000). The Plaintiff's Complaint contains no such stipulation and also sets forth claims that the Plaintiff's injuries are permanent in nature.

12. Therefore, without conceding that the Plaintiff is entitled to any damages, which is expressly denied by the Defendant, it is facially apparent by a preponderance of the evidence

that the amount in controversy exceeds \$75,000. If the Court for any reason is inclined to disagree, Defendant respectfully requests the opportunity to conduct jurisdictional discovery to confirm the amount in controversy.

13. As required by 28 U.S.C. § 1446(b), this Notice of Removal is filed with this Court within thirty (30) days of receipt of the Complaint by the Defendant and, as such, this Notice of Removal has been timely filed.

14. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon the Plaintiff, by and through his attorney of record, and upon the Clerk of the Circuit Court of Kanawha County, West Virginia.

15. Copies of all process, pleadings, and orders received by the Defendant in the Circuit Court of Kanawha County, West Virginia Civil Action Number 18-C-1553, are attached hereto and incorporated herein as **Exhibit A**.

16. Pursuant to Local Rule of Civil Procedure 3.4(b), a copy of the Circuit Court of Kanawha County, West Virginia, Civil Action No. 18-C-1553 docket sheet is attached hereto as **Exhibit B**.

WHEREFORE, the Defendant, United Dairy, Inc., a foreign corporation, respectfully requests that this Court assume full jurisdiction over the case herein as provided by the law, and that the Circuit Court of Kanawha County, West Virginia, proceed no further in this matter. Defendant further demands that the trial of this matter in federal court be heard by a jury.

UNITED DAIRY, INC.,

By Counsel

/s/ David P. Cook, Jr.

David P. Cook, Jr., Esq. (WVSB #9905)

MacCorkle Lavender PLLC

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**CERTIFICATE OF COMPLIANCE
WITH 28 U.S.C. § 1446(d)**

Defendant, by counsel, hereby certifies that in accordance with 28 U.S.C. § 1446(d) written notice of the filing of the Notice Of Removal has been provided to all parties to this action and that a copy of the Notice Of Removal has been filed with the Clerk of the Circuit Court of Kanawha County, West Virginia.

UNITED DAIRY, INC.,

By Counsel

/s/ David P. Cook, Jr.
David P. Cook, Jr., Esq. (WVSB #9905)
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CERTIFICATE OF SERVICE

I, David P. Cook, Jr., do hereby certify that on the 24th day of January, 2019, a true copy of the foregoing **NOTICE OF REMOVAL** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification to the parties set forth below. Also, a paper copy of such filing was served via United States mail, postage prepaid, to the following:

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Counsel for the Plaintiff

/s/ David P. Cook, Jr.
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